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stituted in 1881 against defendant on the bond including the judgment erroneously rendered for plaintiff in the action and sundry executions issued on the judgment which had been sent to various counties of the state in the effort to reach defendant's property was admissible to rebut the presumption of payment arising from lapse of time, though defendant was not legally served with process in the action.

5. Appeal—Harmless Error—Exclusion of Evidence.—The error in excluding the record of an action and judgment therein was not cured by the admission of testimony showing that an execution had been levied on property belonging to defendant, for plaintiff had the right to submit the entire record.

[Ed. Note.—For cases in point, see vol. 3, Cent. Dig. Appeal and Error, §§ 4200-4208.]

6. Evidence—Reputation.—Evidence that a nonresident of the state paid his hotel and drug bills and other incidental expenses during his periodical visits to the state was incompetent to establish general reputation for financial standing and promptness in paying debts.

WINDER *v.* NOCK et al.

Jan. 18, 1906.

[52 S. E. 561.]

1. Trusts—Care Required of Trustee.—The care required of a trustee in an express trust is that required of an ordinarily prudent business man.

[Ed. Note.—For cases in point, see vol. 47, Cent. Dig. Trusts, § 233.]

2. Same—Creation of Trust.—Where a contract between plaintiff and defendant provided that plaintiff should have an equal share in the rents and profits of certain land, and that defendant should sell the property for the best price possible, the proceeds to be divided, defendants' position as to plaintiff was that of a trustee.

[Ed. Note.—For cases in point, see vol. 47, Cent. Dig. Trusts, §§ 25, 34-36.]

3. Same—Diligence of Trustee—Evidence.—In a suit by a cestui que trust against the trustee, evidence considered, and held to show that the price for which the trustee sold certain land was adequate.

AMERICAN TOBACCO CO. *v.* POLISCO.

Jan. 18, 1906.

[52 S. E. 563.]

1. Municipal Corporations—Use of Streets—Negligence—Question for Jury.—In an action for injuries to a child run over by a vehicle